GOVERNMENT OF ANDHRA PRADESH
ABSTRACT

Tribal Welfare Department – Appeal petition filed by Sri Biddika Jayalakshminarayana Rao, S/o Sarojini, Occ: unemployee, Srikakulam District, against the proceedings Rc.No.1531/2011 C1, dated 31.05.2012 of the District Collector, Srikakulam under Section 7(2) of the Andhra Pradesh (Scheduled Castes, Scheduled Tribes and Backward Classes) - Regulation of Issue of Community Certificates Act, 1993 (AP Act No.16/1993) – Appeal Petition allowed – Orders -Issued.

SOCIAL WELFARE (TW.CV2) DEPARTMENT

G.O.MS.No. 14 Dated: 15-02-2018
Read the following:

1. Proceedings of the District Collector, Srikakulam, Rc.No.1531/2011 C1, dated 31.05.2012.
2. Order of the Hon'ble High Court of A.P., Hyderabad in W.P.No.30222/2016, dated 21.10.2016.
3. Appeal Petition filed by Sri Biddika Jayalakshminarayana Rao, though his Counsel before the Government on 21.07.2017.
4. Govt. Memo No.686873/CV.2/2017, dated 11.08.2017.
5. Govt. Memo No.686873/CV.2/2017, dated 26.09.2017.
6. From the District Collector, Srikakulam, Lr.Rc.No.1531/2011-C1, dated 15.09.2017.
7. Govt. Memo No.686873/CV.2/2017, dated 08.11.2017.
8. Govt. Memo No.686873/CV.2/2017, dated 28.11.2017.

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ORDER:

In the reference 1st read above, the District Collector, Srikakulam has issued orders canceling the ST – Jathapu Caste Certificate obtained from the then Tahisildar, Seethampeta Mandal, Srikakulam District in the year 2009 by Sri Biddika Jayalakshminarayana Rao, S/o Sarojini.

2. In the reference 2nd read above, Sri Biddika Jayalakshminarayana Rao, S/o Sarojini, has filed W.P.No.30222/2016 before the Hon'ble High Court of A.P., Hyderabad, against the proceedings of the District Collector, Srikakulam, dated 31.05.2012. The Hon'ble High Court of A.P., while disposing the said W.P. on 21.10.2016 has directed the petitioner to prefer an appeal before the competent authority concerned and that the competent authority is directed to consider his appeal by condoning the delay in filing the said appeal and dispose of the said appeal as expeditiously as possible, preferably with in a period of three weeks, from the date of filing of the appeal by the petitioner.

3. In the reference 3rd read above, based on the directions of the Hon'ble High Court, Sri Biddika Jayalakshminarayana Rao, S/o Sarojini, has filed an Appeal Petition before the Government, against the Proceedings of the District Collector, Srikakulam, and based on the said directions of the Hon'ble High Court, the Government have admitted the Appeal Petition and called for the parawise remarks and connected records from the District Collector, Srikakualm in the reference 4th read above.

4. In the reference 6th read above, the District Collector, Srikakulam has furnished the Parawise remarks and the connected records on the Appeal Petition filed by Sri Biddika Jayalakshminarayana Rao, S/o Sarojini.

5. The said Appeal Petition has been posted for hearing on 16.09.2017, 21.10.2017, 18.11.2017 and finally on 16.12.2017 and the same has been informed to the Appellant and the Counsel for the Appellant in the references 4th, 5th , 7th & 8th read above, and they were requested to attend for the hearing along with all Documentary Evidences/ Certificates in support of the community claim, failing which, it will be construed that there is no explanation what-so-ever to furnish in the matter and that the case will be decided based on the material available with the Government.

[P.T.O]

6. After hearing both the sides and on perusal of the records/ the copies of evidences/academic record/ grounds filed by the Appellant / the parawise remarks submitted by the District Collector, Srikakulam and proceedings of the District Collector, Srikakulam, dated 31.05.2012, the Appellate Authority has observed that:

I. The appellant in his grounds has stated that the facts of the case is that the mother of the appellant is originally belongs to Scheduled Tribe and residence of Kuddapalli Village and developed intimacy with one A. Sanyasi Rao (Brahmin) and due to that relation the appellant and his sister were born. The said A. Sanyasi Rao has cheated and not married his mother and thereby there were termed as illegitimate children born to a illicit contact. Further he has stated that the appellant's mother deposed in the enquiry has categorically stated that they lived happily under one roof and later he has cheated and not married and left her as destitute. After that she lived with her father by eaking the livelihood by doing agriculture in the ½ acre land given by her father by doing agriculture Coolee works. Her father has given ½ acre and lived with The appellant's mother brought up both her children and the villagers have also accepted them as their caste members. Further he has also stated that the Hon'ble Family Court Cum-III Additional District & Sessions Judge Court at Srikakulam has also observed that the children were brought up by the mother and the elders of the village have accepted the mother and the children and made a part of custom and caste.

II. The District Level Scrutiny Committee has observed that based on the reports of Deputy Director (S.W), Srikakulam, District B.C. Welfare Officer, Srikakulam, Deputy Director, (T.W), Seethampeta, Srikakulam District and R.D.O., Palakona, Biddika Sarojini (appellant's mother) developed illicit contact with Adidvikolanu Sanyasi, VDO, Kuddapalli village in 1980, who was a Brahmin (OC) community and blessed with two children viz., Biddika Indira Gayatri and the present claimant and that Sri Adivikolau Sanyasi Rao has left with his already legally wedded wife and four children and that the mother of the appellant claimant followed the customs of Jathapu (ST). Further it is observed that the claimant committed breach of conduct of Jathapu caste by marrying a BC caste woman at Seethampeta village and thus, he deviated the social customs of Jathapu (ST) community and the claimant conveniently omitted to mention the name of his father in the caste certificate with a view to obtain employment under ST reservation and obtained Jathapu (ST) caste certificate and therefore the DLSC is confirmed that the claimant is a Brahmin (OC) and he can be treated as OC as his father belongs to Brahmin(OC). Finally, the DLSC has recommended the same to the District Collector, that the appellant does not belongs to ST-Jathapu community.

III. Under section 6 of the Andhra Pradesh (Scheduled Castes, Scheduled Tribes and Backward Classes) Regulation of Issue of Community Certificates Act 1993 (AP Act No.16/1993) the burden of proof lies on the Appellant only.

IV. The Appellate Authority is observed that during the course of arguments that the Appellant submitted that his mother is originally a Scheduled Tribe Woman and she had developed intimacy with one A. Sanyasi Rao who is Brahmin and due to the said relation, himself and his sister was born and the said person has cheated and not married his mother and thereby they termed as illegitimate children and further stated that her mother admitted him in a school by mentioning her name and, without showing name of his biological father and he had never recognized as son of his biological father and he was bought up in Schedule Tribe community with suffering of all the drawbacks of Schedule Tribe Community. On verification of the arguments and the documents and the grounds of appeal and Para wise remarks as the other documents and material available on the record more particularly with regard to the enquiry of revenue authorities it is noticed that the appellant was brought up by his mother by living along with her

[Contd…on P.3]

parents in the same village since the biological father of the appellant discarded with her mother after she having two children with him and both the children grownup by her at her father's house. It is further brought to the notice as per the guidelines prevailing that the child should be born and brought up in the community fold for which they are claiming for reservation and the children of inter caste and inter religion married couple cannot automatically claim socially the claim of his parent and they shall be accepted by the community in which they are claiming. In the instant case the mother of the claimant belong to Schedule Tribe Community admittedly and whereas the biological father belongs to OC community and after the begot of the children they were separated and whereas the appellant brought up by his mother who is schedule Tribe Community since his childhood in the said community and further the school record also show that he brought up by her mother only without the name of his biological father and only with the name of his mother. It is also noticed that the biological father of the appellant is having legally wedded wife and four children and the mother of the appellant is unwedded due to the same reason and for the said person extra matrimonial affair that the appellant and his sister born to their mother and later he left them to their fate. It is case of the lower authority that the appellant committed breach of conduct of Jatapu Caste by marrying a BC caste woman and violated the social customs of Jatapu Caste. In this connection it is noticed that the inter caste marriage may not automatically brushed the original caste.

V. The Appellate Authority is also observed that the primary guardian of an illegitimate child is the mother as against the father in case of legitimate child. The objection is not to the mother's right but to the different legislative provision depending on whether the child is born in or outside wedlock. The sole factor should be the best interests of the child rather than the legal relationship of its parents. As per Black Law dictionary illegitimate means "something which is contrary to law". Illegitimate children as stated by Apex Court are children who are not born out of a lawful wedlock. The legitimacy or illegitimacy of a child depends on the status of valid or void marriage. Hence social status of a child depends on the act of its parents since there no illegitimate children and there are only illegitimate parents. As seen from the totality of the case it indicates admittedly that the appellant born and brought up in the community fold for which he is claiming, it is further observed as per the record that the mother of the appellant is the Schedule Tribe Community and the appellant is accepted by the Community of his mother and bought up by the mother of the community as such the appellant shall be treated as Schedule Tribe Community. It is also noticed as the claimant inadvertently or mistakenly or the recital made in the lower authority order that the appellant approached the civil court and obtained the order of set aside the lower authority order but as per the Act that the appellant shall file appeal before the Government if aggrieved but not with the civil court and ultimately filed the present appeal. Taking into consideration of the fact and circumstances that the same is admitted by condoning the delay by excluding the time of earlier civil proceedings and accordingly the delay is condoned in view of proceedings in the wrong forum is bona fide one. That taking consideration of the above and the material available on the record that it can be concluded that the lower authority failed to observe the finding of the concerned above.

7. In view of the several reasons recorded in the paras supra, the Government, in exercise of the powers conferred under Section 7(2) of the Andhra Pradesh (Scheduled Castes, Scheduled Tribes and Backward Classes) Regulation of Issue of Community Certificates Act 1993 (Act No.16 of 1993), hereby allow the Appeal Petitions filed by Sri Biddika Jayalakshminarayana Rao, S/o Sarojini, by upholding their Scheduled Tribe (Jathapu) claim and the Proceedings of the District Collector, Srikakulam issued in the reference 1st read above are set- aside.

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8. The District Collector, Srikakulam is directed to take necessary consequential action in the matter.

9. The records (containing Rc.No.1531/2011 C1, CF: 1-777, NF: 1-62) received from the District Collector, Srikakulam through the reference 6th read above, are returned herewith in original to the District Collector, Srikakulam and he is requested to acknowledge the receipt of the same, immediately.

(BY ORDER AND IN THE NAME OF THE GOVERNOR OF ANDHRA PRADESH)

S.S. RAWAT
PRINCIPAL SECRETARY TO GOVERNMENT

To
The District Collector, Srikakulam .
(with original records) (BY RPAD)

Sri Biddiaka Jayalakshminarayana Rao,
S/o Sarojini,
R/o Kuddapalli Village & Post,
Seetampeta Mandal, Srikakulam District,
Pin Code: 532 443.

M/s. G. Tuhin Kumar,
G. Narasimha Rao, Advocates,
D.No. # 1-4-911 to 921,
Vajra Residency, Flat No.401,
Block 'A', Opp: Rolex Café,
Musheerabad, Hyderabad-20

Copy to :
The District Educational Officer, Srikakulam.
The Director, TCR& TI, AP, Amaravathi.
The PS to M(SWE& TWE).
The PS to Principal Secretary(SW&TW).

// FORWARDED:: BY ORDER //

SECTION OFFICER